

Andy's Restaurant & Lounge, Inc.  
9300 Melton Road  
Gary IN 46403

Permit #RR45-01568  
District 1

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**I.**

**BACKGROUND OF THE CASE**

The Permittee, Andy's Restaurant & Lounge, Inc., 9300 Melton Road, Gary IN 46403 (Permittee), filed its application for a renewal of a type 210, Alcohol and Tobacco Commission (ATC) permit, permit #RR45-01568. The ATC assigned the application for hearing before the Lake County Local Board (LB). The LB conducted its investigation and hearing regarding this application and voted to recommend denial of this permit citing 905 IAC 1-27-2 as its basis for denial of the application. The ATC voted to adopt the recommendation of the LB on July 16, 2002.

The Permittee filed a timely notice of appeal and the matter was set before ATC Hearing Judge Daniel M. Steiner (HJ). Attorney Edward Wortman represented the Permittee at the ATC appeal hearing. The remonstrators were not represented by counsel. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. At this time, the HJ submits his Proposed Findings of Fact and Conclusions of Law to the ATC for its consideration.

**II.**

**EVIDENCE AT THE HEARING**

**A.**

**WITNESSES**

The following witnesses were sworn and provided testimony at the appeal hearing:

1. Andrew Batalis (A. Batalis), the Permittee herein. Batalis stated he has owned the bar for twenty (20) years and has never been convicted of a crime. He further stated that he has an injunction pending against the city of Gary regarding their ordinance concerning adult entertainment establishments. Through A. Batalis, Permittee's Exhibit 1, 2, 3, 4, 5, 6, 7, and 8 were admitted. A. Batalis stated he was cited for ATC violations in September of

2001. He stated that he was cited for violations of minors, nudity and lack of permit, the last charge based on the fact that his Letter of Extension had run out. A. Batalis stated that he plead guilty to two (2) of the counts, the expired Letter of Extension and a bartender working without a permit. He further stated that the pending Indiana Department of Environmental Management (IDEM) violations against him are at a location ten (10) miles away from these premises and that he had never been convicted of a misdemeanor or felony. Further, through A. Batalis, Remonstrators' Exhibits A & B, which are already in the LB record, were admitted without objection and Remonstrators' Exhibit A was admitted over the objection of lack of foundation.

2. Peter Batalis (P. Batalis), son of the Permittee. P. Batalis stated that he has been dealing with the pending IDEM violations and that the violations were based on one (1), fifty-five (55) gallon drum of paint and several batteries, some construction waste, such as wood and other empty drums on the property of A. Batalis, which is located in the town of Lake Station IN. Through P. Batalis, Remonstrators' Exhibit D (in four parts) was admitted. On redirect examination P. Batalis stated that all these materials have been disposed of and that he and his father are waiting for a final IDEM inspection.
3. Marilyn Krusas (Krusas), a remonstrator in this matter and a Gary city councilperson. Krusas stated that she is opposed to the renewal of this permit because there have been citations against the Permittee and petitions signed by remonstrators opposed to this permit. On cross-examination Krusas stated that she represents the citizens of her councilmanic district here today, that she is here supporting her constituents, that she has never been in the premises and that she has only been on the real estate of the premises once and that she has spoken with other owners of strip bars and that she has spoken with less than 250 people in her district regarding these types of permits.
4. Chris Julsrud (Julsrud), lead remonstrator. Julsrud stated that 905 IAC 1-27-1 was considered by the LB in reaching their recommendation of denial of this application and he believes that the Permittee does not meet the requirement of esteem in their community and good moral character. On cross-examination he stated that he has never been inside the premises, nor has he ever parked there. He further stated that to his knowledge no member of his remonstrator group has ever been inside these premises.

B.  
EXHIBITS

The following exhibits were offered at the appeal hearing:

1. Permittee's Exhibit 1, their general business license from the city of Gary, dated September 9, 2002. This exhibit was admitted without objection.

2. Permittee's Exhibit 2, their retail food license from the city of Gary, which also was admitted without objection.
3. Permittee's Exhibit 3 (in three parts), consisting of an Order of Stay against the city of Gary regarding their adult entertainment ordinance. This exhibit being admitted without objection.
4. Permittee's Exhibit 4, a Motion for Contempt citation against an official from the city of Gary. This exhibit admitted without objection.
5. Permittee's Exhibit 5, a photograph looking north from Permittee's building. This exhibit was admitted over the objection of lack of notice to remonstrators.
6. Permittee's Exhibit 6, a photograph of the front of the premises in question looking northwest. This exhibit was admitted over the same objection by remonstrators.
7. Permittee's Exhibit 7, a photograph from the premises in question looking north, which was admitted over the same objection by remonstrators.
8. Permittee's Exhibit 8, a photograph looking south from the premises in question, said exhibit admitted over the same objection by remonstrators.
9. Remonstrators' Exhibit A (in 7 parts), consisting of a printout of an Internet site of the IDEM regarding the status of the pending citations against Permittee, which has been previously discussed in these findings.
10. Remonstrators' Exhibit B (in 2 parts), consisting of a Parties Agreed Disposition regarding Andy Batalis, d/b/a Andy's Restaurant & Lounge, 9300 Melton Road, Gary IN 46403, file #RR45-01568. This was admitted as evidence of citations issued against Permittee regarding events that were alleged to have occurred on the 14<sup>th</sup> day of September 2001, said charges consisting of: operating on an expired permit; employee permits required and employer responsible for all employee permits; minimum food service requirement; public indecency and nude dancing restrictions; and minor in a tavern. The documents shows regarding the first two (2) of said citations, the Permittee agreed to pay \$250.00 fine on each and on the remaining three (3) violations the Permittee agreed to a deferred judgment with the notation that if no similar violations occur within one (1) year from January 22, 2002, these charges will be dismissed. If similar violations occur, a \$1,250.00 fine will be imposed in addition to any penalty on the new violations. Further that this was an Agreement between ATC Prosecutor Frederick T. Bauer and the Permittee, Andy Batalis, which was reached on January 22, 2002 and duly

memorialized by the Alcohol and Tobacco Commission at their public meeting on February 5, 2002.

11. Remonstrators' Exhibit C (in 3 parts), consisting of a Notice of Violation from IDEM to Andy Batalis, 3786 Liverpool Road, Hobart IN 46342.

### III. FINDINGS OF FACT

1. The Permittee, Andy's Restaurant and Lounge, Inc., 9300 Melton Road, Gary IN 46403, is the holder of an ATC, type 210 permit, permit RR45-01568. (ATC file)
2. The LB recommended denial of Permittee's renewal application on July 2, 2002, citing 905 IAC 1-27-2. (record of LB hearing and ATC file)
3. The undisputed evidence is that the Permittee admitted to an ATC violation, which occurred on or about September 14, 2001, said admission being contained in a copy marked Remonstrators' Exhibit B, at the ATC appeal hearing, whereby the Permittee acknowledge the following violations: operating on an expired permit and employee permits required and employer responsible for all employee permits. The Permittee also acknowledge regarding the citations for minimum food service requirements, public indecency and nude dancing restrictions, and minor in a tavern, that if no similar violations occur within one (1) year from January 22, 2002, these charges will be dismissed. If similar violations occur, a \$1,250.00 fine will be imposed in addition to any penalty on the new violations. (ATC violation file herein and ATC record of appeal hearing herein)
4. 905 IAC 1-27-1 states as follows:

In determining an applicant or a permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the commission shall consider whether acts or conduct of the applicant, permittee, or his employees or agents would constitute acts or conduct prohibited by the Indiana Penal Code (IC 7.1-35-41-1-1 et. seq.), or a criminal offense under the laws of the United States. The commission may also consider the esteem in which the person is held by members of his community and such assessment of his character as may reasonably be inferred from police reports, evidence admitted in court and commission proceedings, information contained in public records and other sources of information as permitted by IC 7.1-3-19-8 and IC 7.1-3-19-10. (905 IAC 1-27-2)

5. IC 7.1-3-19-8 states as follows:

In the discretion of the designated member of the local board, sworn oral testimony may be heard, and affidavits or duly certified documents may be received. The local board may also utilize any and all sources of unsworn information. (IC 7.1-3-19-8)

6. IC 7.1-3-91-10 states as follows:

The commission may investigate in any manner it deems best to enable it to act upon the application in a particular case. The commission may grant or refuse the application accordingly as it deems the public interest will be served best. The action of the commission on the application for a retailer or dealer's permit of any type shall be final. (IC 7.1-3-19-10)

7. That undisputed evidence was received at the ATC appeal hearing regarding violations of violations admitted in commission proceedings, to wit: the Parties Agreed Disposition regarding the permittee herein formerly adopted by the commission at their regularly scheduled public hearing on February 5, 2002, and therefore, constitutes evidence which pursuant to 905 IAC 1-27-1 may be used in determining a permittee's eligibility to hold, renew or continue to hold a permit particularly whether the permittee is of good moral character and of good repute and forms the basis and constitutes evidence by which the commission may also consider the esteem in which the person is held by members of his community. (ATC appeal hearing and 905 IAC 1-27-2)
8. Any conclusion of law included in the foregoing findings of fact shall be deemed part of the ATC conclusions of law.

#### IV. CONCLUSIONS OF LAW

1. The Permittee, Andy's Restaurant & Lounge, Inc., 9300 Melton Road, Gary IN 46403, is the holder of a type 210, ATC permit, permit #RR45-01568. (ATC file)
2. The LB recommended this renewal application be denied because of 905 IAC 1-27-2. Based on evidence received at the LB hearing regarding remonstrators in opposition to this renewal application and at the ATC appeal hearing based on Julsrud's testimony as to the Permittee not being held in the proper esteem and not being considered of good moral character by the members of the community and based on violations of ATC laws by the Permittee, the recommendation of denial of this renewal by the LB and the adoption of that recommendation by the ATC should be sustained. (ATC permit and violation file, record of LB proceedings and ATC appeal hearing)

3. That the recommended denial of renewal by the LB and the adoption of that recommendation by the ATC was not: 1) arbitrary, capricious, an abuse of discretion, or otherwise not accordance with the law; 2) contrary to a constitutional right, power, privilege, or immunity; 3) not in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; 4) nor was it without observance of procedure required by law; nor was it 5) unsupported by substantial evidence. (IC 7.1-3-19-11)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the recommended denial of this renewal by the LB on July 2, 2002 and the adoption of that recommendation by the ATC on July 16, 2002, is supported by substantial evidence and the adoption of the recommendation of denial by the ATC should be and the same hereby is affirmed and the appeal of the action by the LB and the ATC are denied.

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel M. Steiner, Hearing Judge